

Virginia Department of Health
Center for Quality Health Care Services and Consumer Protection

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Advance Directive and Do-Not-Resuscitate Orders

Since 1991, when the Patient Self-Determination Act took effect, federal law has required nursing facilities and other health care institutions participating in the Medicare and Medicaid programs to give residents at admission written information on their rights under state law to make decisions about their medical care, including the right to accept or refuse treatment and the right to formulate advance directives. Nursing facilities also must have written policies in place governing implementation of such rights, must document in the medical record whether the patient has an advance directive and must ensure that the facility complies with state law regarding advance directives.

Virginia law recognizes residents' rights to consent to treatment, including their right to refuse treatment. To protect residents who may lose their ability to give consent to treatment, the law also provides for advance directives, which permit a competent adult to create a "living will" that authorizes the provision, withholding or withdrawal of life-prolonging procedures in the event he has a terminal condition, or is in a persistent vegetative state. "Life-prolonging procedures" are treatments that are not expected to cure a terminal condition and that only prolong dying, such as artificial nutrition and hydration, cardiopulmonary resuscitation or use of a respirator. They do not include comfort care.

An adult may also use an advance directive to appoint an agent to make health care decisions for him should he become incapable of making an informed decision, regardless of whether he has a terminal condition. This type of advance directive allows the agent to make any type of health care decision, not just those related to life-prolonging procedures. However, in the advance directive, the resident may provide direction to the appointed agent about treatment wanted or not wanted.

The law suggests an advance directive form, which should be signed in the presence of two witnesses who are not a spouse or blood relative of the resident. An adult with a terminal condition also may make an oral advance directive in the presence of the attending physician and two witnesses.

Emergency medical services (EMS) personnel are not authorized to follow advance directives when called in an emergency, but Virginia law does permit residents to direct EMS personnel to withhold one type of treatment - cardiopulmonary resuscitation. This is done when the physician issues a "Durable Do-Not-Resuscitate (DNR) Order" on a form approved by the Board of Health. This order replaces the order formerly called an "Emergency Medical Services Do Not Resuscitate Order." The Durable DNR order may be issued by a physician for his own patient with the patient's consent; the patient need not have a terminal condition. It may be issued for children or for residents who are incapable of consenting with consent of those authorized to make treatment decisions for them. Whoever consents to the Durable DNR Order also may revoke it any time; the order is valid indefinitely unless it is revoked. The Durable DNR order is valid and is to be followed by EMS personnel or by licensed health care providers in any facility, program or organization licensed or operated by a state board or agency - thus, it is "portable" across health care settings.

A Durable DNR Order is distinct from any other type of DNR order issued in a health care facility, the latter often created when a physician enters the order on a patient's or resident's chart. These latter types of DNR order continue to be governed by accepted medical practice and are not affected by the requirements governing Durable DNR Orders. They do not require the use of the special state-approved form; they also are not portable as are Durable DNR orders and EMS personnel may not follow them.

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The resident creates the advance directive; it takes effect when the resident is unable to express his treatment preferences and decisions. It triggers the need for subsequent physician's orders to implement the wishes expressed in the advance directive. On the other hand, a Durable DNR Order is a physician's order; it cannot be issued by anyone other than the patient's physician. A Durable DNR Order, or any type of DNR order, may be issued to implement the patient's wishes as expressed in an advance directive. However, it is not necessary that the patient have an advance directive to have a Durable DNR Order or another type of DNR order. Only a competent adult may create an advance directive; Durable DNR Orders or other DNR orders may be entered for children or for patients who have lost decision-making capacity.